

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 KEENAN TILLISON,

8 Plaintiff,

9 v.

10 JOSEPH BRUSIE and  
11 JULIENNE DOMINGEZ,

12 Defendants.

NO: 1:20-CV-3055-TOR

ORDER OF DISMISSAL

13 By Order filed May 29, 2020, the Court advised Plaintiff of the deficiencies  
14 of his complaint and directed him to amend or voluntarily dismiss within sixty (60)  
15 days. ECF No. 7. Plaintiff, a pretrial detainee at the Yakima County Jail is  
16 proceeding *pro se* and *in forma pauperis*; Defendants have not been served.

17 Specifically, Plaintiff named a private person as a defendant to this action  
18 pursuant to 42 U.S.C. § 1983 and failed to present any facts from which the Court  
19 could infer that she was acting under color of state law. *Taylor v. List*, 880 F.2d  
20 1040, 1048 (9th Cir. 1989). Plaintiff's allegations against Defendant Joseph Brusie,

1 a prosecuting attorney, were insufficient to lower the shield of absolute prosecutorial  
2 immunity. *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976).

3 In addition, Plaintiff sought his release and the only federal remedy by which  
4 a state prisoner may obtain his release is a writ of habeas corpus with its requirement  
5 of exhaustion of state remedies. *See Preiser v. Rodriguez*, 411 U.S. 475, 487-90  
6 (1973). The Court also determined that it was appropriate to abstain from  
7 intervening in a pending state court criminal proceeding under *Younger v Harris*,  
8 401 U.S. 37, 45 (1971).

9 For the reasons set forth above and in the Order to Amend or Voluntarily  
10 Dismiss, ECF No. 7, **IT IS ORDERED** that the First Amended Complaint is  
11 **DISMISSED without prejudice** to Plaintiff filing any challenge to the fact or  
12 duration of his confinement in the appropriate forum. Under *Washington v. L.A.*  
13 *Cty. Sheriff's Dep't*, 833 F.3d 1048 (9th Cir. 2016), this dismissal will NOT count as  
14 a “strike” pursuant to 28 U.S.C. § 1915(g).

15 //

16 //

17 //

18 //


19 //

20 //

1       **IT IS SO ORDERED.** The Clerk of Court is **DIRECTED** to enter this Order,  
2 enter judgment, provide copies to Plaintiff and **CLOSE** the file. The Court certifies  
3 pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken  
4 in good faith and would lack any arguable basis in law or fact. Plaintiff's *in forma*  
5 *pauperis* status is hereby **REVOKED**.

6       **DATED** August 4, 2020.



8         
THOMAS O. RICE  
9 United States District Judge